

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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EBNER GOLD MINING COMPANY (a Corporation),  
Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,  
Defendant in Error.

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Supplemental Transcript of Record.

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Upon Writ of Error to the United States District Court of  
the District of Alaska, Division No. 1.

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*In the District Court for the District of Alaska,  
Division Number One, at Juneau.*

835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff and Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant and Defendant in Error.

**Supplemental Record on Appeal.**

WINN & BURTON, Attorneys for Plaintiff  
and Plaintiff in Error.

HELLENTHAL & HELLENTHAL, Attor-  
neys for Defendant and Defendant in Er-  
ror.

Addresses: Juneau, Alaska.

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*In the Circuit Court of Appeals for the Ninth Cir-  
cuit, Holden at San Francisco.*

THE EBNER GOLD MINING COMPANY, a Cor-  
poration,

Plaintiff in Error,

vs.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Defendant in Error.

*In the District Court for the District of Alaska,  
Division No. One.*

THE EBNER GOLD MINING COMPANY, a  
Corporation,

Plaintiff,

vs.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Defendant.

**Stipulation [Concerning Certain Omissions from  
Testimony and Bill of Exceptions, and Concern-  
ing Supplemental Transcript of Record].**

It is hereby stipulated by and between counsel for the respective parties as follows:

That whereas, this cause was tried in the District Court for Alaska at Juneau before the Honorable E. E. Cushman, who was the Judge assigned to the Third Division for the District of Alaska and was temporarily holding court in the First Division at Juneau, at the time of the trial of the above-entitled cause; and that whereas the testimony upon the trial was taken in shorthand by I. Hamberger, who transcribed the same after the return of Judge Cushman to the Third Division where he was accompanied by the said I. Hamberger; that in transcribing his notes of the testimony the said I. Hamberger inadvertently omitted certain proceedings had upon the trial, which are hereinafter referred to, and certified to the Court that the transcript as prepared by him contained all the evidence and proceedings had upon the trial, while as has been stated, certain proceed-

ings were inadvertently omitted; that the said transcript incorporated in the proposed bill of exceptions was submitted to the Honorable E. E. Cushman while at Valdez and presented to him for settlement by the said Hamberger at the request of counsel for plaintiff in error, who [1\*] believed that the proceedings hereinafter referred to, together with all the other evidence in the case, had been incorporated therein; that counsel for both sides reside at Juneau, Alaska, several hundred miles distant from said Valdez, Alaska, and on that account the Honorable E. E. Cushman, relying upon the certificate of the said I. Hamberger that the said proposed bill of exceptions contained all the evidence and proceedings had upon the trial, settled and allowed said bill of exceptions and certified that the same contained all the evidence and proceedings had; that the record in this cause is very voluminous so that the Court, as well as counsel, were obliged to rely upon the certificate of the reporter to the effect that the proposed bill of exceptions did contain all the evidence and proceedings:

NOW, THEREFORE, it is stipulated by and between counsel for the respective parties that in addition to the evidence and proceedings incorporated in the bill of exceptions, the proceedings hereinafter referred to were had upon the trial of the above-entitled cause; that at the close of the evidence of F. J. Wettrick, in rebuttal, the following proceedings were had in open court, as evidenced by the tran-

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\*Page-number appearing at foot of page of original certified Record.

script certified to by I. Hamberger, hereto attached and marked Exhibit "A."

EXHIBIT "A."

"By Judge WINN.—We rest with the understanding that if the Court wants to go up and see the property I will join in the request, but the probabilities are you would not see some things as they have been testified to because the rain, etc., make changes very suddenly up there.

By the COURT.—I think the counsel had better agree—if both sides are requesting it—that one man from each side accompany the Court so as to point out and direct attention to anything.

Mr. SHACKLEFORD.—We will have Mr. Stewart go up with you.

Judge WINN.—Mr. Wettrick has not been up there on any of these last trips but Mr. Ebner can go with Mr. Wettrick in advance and point out to him any of these matters that have come up and then he will be in position to state to the Court what we have contended.

By the COURT.—It being understood that no further disturbance of the conditions as far as this pit is concerned will be made by either side. [2]

Judge WINN.—Yes, sir, it is understood he will simply point out to Mr. Wettrick generally some of the matters that have been testified to."

It is further agreed that after the above referred to proceedings were had in open court and pursuant thereto the presiding Judge, the Honorable E. E.

Cushman, did view the premises in dispute accompanied by B. F. Stewart and F. J. Wettrick, who represented the respective parties and pointed out to the Court the matters and things referred to in the testimony by the various witnesses.

It is further stipulated and agreed that this stipulation shall be submitted to the Circuit Court of Appeals as part of the record in the cause and shall be deemed and considered as a part of the record as fully as if made so by order of the Court, and that the matters and things herein set forth shall be regarded in the same light as though actually incorporated in the bill of exceptions; and further, that this stipulation shall be printed by the Clerk of the Circuit Court of Appeals as part of the record in the cause above referred to.

This stipulation is entered into for the reason that the Honorable E. E. Cushman no longer occupies the bench in Alaska, and for the further reason that the Honorable T. R. Lyons, Judge of the First Division in the District of Alaska, is now in the Second Division, so that there is not now any Judge in the First Division for the District of Alaska, so that the proceedings above referred to could be certified to by any Judge as part of the record in the cause or made part of the record by a supplemental bill of

exceptions signed by any Judge.

Dated this 15th day of August, 1912.

JNO. R. WINN,

WINN & BURTON,

Attorneys for the Plaintiff in Error, Plaintiff in the  
Court Below.

J. A. HELLENTHAL,

HELLENTHAL & HELLENTHAL,

Attorneys for the Defendant in Error, Defendant in  
the Court Below. [3]

EXHIBIT "A."

At the close of the evidence of F. J. Wettrick, in  
Rebuttal:

By Judge WINN.—We rest with the understanding that if the Court wants to go up and see the property I will join in the request, but the probabilities are you would not see some things as they have been testified to because the rain, etc., make changes very suddenly up there.

By the COURT.—I think the counsel had better agree—if both sides are requesting it—that one man from each side accompany the Court so as to point out and direct attention to anything.

Mr. SHACKLEFORD.—We will have Mr. Stewart go up with you.

Judge WINN.—Mr. Wettrick has not been up there on any of these last trips but Mr. Ebner can go with Mr. Wettrick in advance and point out to him any of these matters that have come up and then he will be in position to state to the Court what we have contended.

By the COURT.—It being understood that no fur-

ther disturbance of the conditions as far as this pit is concerned will be made by either side.

Judge WINN.—Yes, sir, it is understood he will simply point out to Mr. Wettrick generally some of the matters that have been testified to.

I do hereby certify that the above is part of the record in the case of the Ebner Gold Mining Co. vs. Alaska-Juneau Gold Mining Co., No. 835-A, of the District Court for the First Division of Alaska; that if the same does not appear in the original Bill of Exceptions and Transcript of the evidence, its omission was an oversight on my part. I have no copy of the transcript before me, but have been advised that it cannot be found in the record as printed.

Dated Valdez, Alaska, August 5, 1912.

(Signed) I. HAMBERGER. [4]

[Endorsed]: In the Circuit Court of Appeals for the Ninth Circuit, Holden at San Francisco. The Ebner Gold Mining Company, a Corporation, Plaintiff in Error, vs. The Alaska-Juneau Gold Mining Company, a Corporation, Defendant in Error. In the District Court for the District of Alaska, Division No. One. The Ebner Gold Mining Company, a Corporation, Plaintiff, vs. The Alaska-Juneau Gold Mining Company, a Corporation, Defendant. Stipulation.

Filed Aug. 16, 1912. E. W. Pettit, Clerk. By J. J. Clarke, Deputy. [5]

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2155.

EBNER GOLD MINING COMPANY,

Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COM-  
PANY,

Defendant in Error.

**Stipulation [Continuing Cause to December, 1912,  
Session, etc.].**

WHEREAS, negotiations are pending looking toward a settlement of the above-entitled cause;

IT IS HEREBY STIPULATED AND AGREED by and between counsel representing the above-named plaintiff in error and the above-named defendant in error, respectively, that the above-entitled cause be continued to the December Session of the above-entitled court, 1912;

AND IT IS FURTHER STIPULATED AND AGREED, that the printing of the Record in said above-entitled cause need not be commenced until the 15th day of October, 1912.

Dated at Juneau, Alaska, August 15th, 1912.

(Signed) JNO. R. WINN,  
WINN & BURTON,  
Attorneys for Plaintiff in Error.

(Signed) J. A. HELLENTHAL,  
HELLENTHAL & HELLENTHAL,  
Attorneys for Defendant in Error.

[Endorsed]: In the United States Circuit Court for the Ninth Circuit. No. 2155. Ebner Gold Mining Co., Plaintiff in Error, vs. Alaska-Juneau Gold Mining Co., Defendant in Error. Stipulation Filed Aug. 16, 1912. E. W. Pettit, Clerk. By J. J. Clarke, Deputy. [6]

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*In the District Court for the District of Alaska, Division No. One.*

THE EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

THE ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

**Praeipce [for Supplemental Transcript of Record].**

To the Clerk of the District Court for the District of Alaska, Division No. 1:

You are hereby directed to transmit to the Circuit Court of Appeals for the Ninth Circuit, as part of the record in this cause, a stipulation filed on August 15, 1912, relating to evidence and proceedings omitted from the bill of exceptions by inadvertence. Also stipulation continuing cause and extending time to print Record.

WINN & BURTON,

Attorneys for the Plaintiff. [7]

[Endorsed]: Original. No. ———. In the District Court for the District of Alaska, Division No. 1.

The Ebner Gold Mining Company, a Corporation,  
Plaintiff, vs. The Alaska-Juneau Gold Mining Com-  
pany, a Corporation, Defendant. Praeceptum. Filed  
Aug. 16, 1912. E. W. Pettit, Clerk. By J. J. Clarke,  
Deputy. [8]

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*In the District Court for the District of Alaska, Divi-  
sion Number One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff and Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant and Defendant in Error.

**Certificate [of Clerk U. S. District Court to Supple-  
mental Transcript of Record, etc.].**

I, E. W. Pettit, Clerk of the District Court for the  
District of Alaska, Division No. 1, do hereby certify  
that the above and foregoing and hereunto annexed  
eight pages of typewritten and written matter, num-  
bered from 1 to 8 both inclusive, constitute a full, true  
and correct copy of the record, and the whole thereof,  
prepared in accordance with the praecipe of the  
plaintiff and plaintiff in error, on file in my office and  
made a part hereof, in Cause No. 835-A of the above-  
entitled Court, wherein Ebner Gold Mining Com-  
pany, a corporation, is plaintiff and plaintiff in error,  
and the Alaska-Juneau Gold Mining Company, a cor-  
poration, is defendant and defendant in error.

I FURTHER CERTIFY that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to three and ninety-five one-hundredths dollars (\$3.95), has been paid to me by Newark L. Burton, Esquire, of counsel for plaintiff and plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the above-entitled court this 16th day of August, A. D. 1912.

[Seal]

E. W. PETTIT,  
Clerk.

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[Endorsed]: No. 2155. United States Circuit Court of Appeals for the Ninth Circuit. Ebner Gold Mining Company, a Corporation, Plaintiff in Error, vs. Alaska-Juneau Gold Mining Company, a Corporation, Defendant in Error. Supplemental Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed August 26, 1912.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

